



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Central Regional Office • 8 New Bond Street, Worcester MA 01606 • 508-792-7650

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

Leah D. Basbanes,  
Acting Chair Board of Selectmen  
Dunstable Town Hall  
511 Main Street  
Dunstable, MA 01827

Re: Water Supply – Dunstable  
Dunstable Water Department  
PWS# 2081000  
CONSENT ORDER AND NOTICE  
OF NONCOMPLIANCE with M.G.L.  
Chapter 111 §159 and 310 CMR 22.00

**ACOP-CE-18-5D00004407**

Dear Ms. Basbanes:

Enclosed please find an executed copy of the Administrative Consent Order with Penalty (ACOP) that reflects the parties' agreement as a result of our negotiations. As stated in the executed ACOP, you must comply with all requirements set forth in the ACOP. Please review Section III, Disposition and Order, for specific instructions.

We appreciate your cooperation in negotiating this agreement. Should you have any questions concerning the ACOP, please contact me at (508) 849-4036, as soon as possible.

Very truly yours,

Robert A. Bostwick  
Drinking Water Section Chief  
Bureau of Water Resources

6/21/2018

\_\_\_\_\_  
Date

Enclosure: ACOP-CE-18-5D00004407

cc: Dunstable Board of Health  
Rebecca Tobin, Senior Regional Counsel, MassDEP OGC CERO

**COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

**Town of Dunstable**

Enforcement Document Number:

ACOP-CE-18-5D00004407

Issuing Bureau: BWR

Issuing Region/Office: CERO

Issuing Program: DWP

Primary Program Cited: DWP

PWS ID #: 2081000

**ADMINISTRATIVE CONSENT ORDER WITH PENALTY  
AND  
NOTICE OF NONCOMPLIANCE**

**I. THE PARTIES**

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Central Regional Office at 8 New Bond Street, Worcester, MA 01606.
2. The Town of Dunstable ("Respondent") is a municipality with a place of business at 511 Main Street, Dunstable, Massachusetts 01827. Respondent's mailing address for purposes of this Consent Order is 511 Main Street, Dunstable, Massachusetts, 01827.

**II. STATEMENT OF FACTS AND LAW**

3. MassDEP has primary enforcement responsibility for the requirements of the Federal Safe Drinking Water Act, 42 U.S.C. §300f *et seq.* and the regulations promulgated there under. MassDEP implements and enforces statutes and regulations of the Commonwealth of Massachusetts for the protection of the public drinking water supply, including, without limitation, M.G.L. c. 111, §5G and §160 and, the Drinking Water Regulations at 310 CMR 22.00; the Cross Connections, Distribution System Protection Regulations at 310 CMR 22.22; and the Underground Injection Control Regulations at 310 CMR 27.00. MassDEP, pursuant to M.G.L. c. 111, §160, may issue such orders as it deems necessary to ensure the delivery of fit and pure drinking water by public water systems to all consumers. MassDEP, pursuant to M.G.L. c. 111, §5G, may require by order the provision and operation of such treatment facilities as it deems necessary to ensure the delivery of a safe water supply to all consumers. MassDEP's Drinking Water Regulations at 310 CMR 22.02 define a public water system as a system for the provision to the public of water for human consumption, through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of

at least 25 individuals daily at least 60 days of the year. 310 CMR 22.02 also defines a supplier of water as "any person who owns or operates a public water system." MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

4. Respondent oversees a community public water system (PWS# 2081000) serving a population of approximately 600 persons per day in the winter and 227 persons per day in the summer. Water from two (2) wells (02G & 03G) is treated with potassium hydroxide for pH control prior to being pumped to the distribution system. Respondent utilizes two underground 5,000 gallon hydropneumatic tanks, installed in 1901, to maintain pressure in the system.

5. The following facts and allegations have led MassDEP to issue this Consent Order:

- A. On April 20, May 4, and June 22, 2017, MassDEP conducted sanitary survey inspections of the Respondent's public water system.
- B. On July 27, 2017, MassDEP issued a Sanitary Survey Report (NON-CE-17-5D041) identifying three (3) violations, fourteen (14) deficiencies of good water system practices and eight (8) recommendations to improve the water system's ability to provide safe and pure drinking water. Two specific required corrective actions were:
  - a) Submit a corrective action plan with a timeline for replacing or repairing the leaking and corroded hydro-pneumatic tanks; and,
  - b) Submit monthly Chemical Addition Form including pH measurements from the in-line analyzer, and from a handheld analyzer for samples taken at the entry point and in the distribution system.
- C. On August 31, 2017, Respondent submitted a response to the Sanitary Survey Report complying with the three (3) Table A Violations, fourteen (14) Table B Deficiencies and three of the eight Table C Recommendations.
- D. On October 31, 2017, in response to customer complaints of slippery water and burning hands, MassDEP conducted an unannounced inspection at the Respondent's public water system and noted that the pH entering the distribution system was fluctuating between 5.8 and 9.5. Respondent adds potassium hydroxide to adjust pH for corrosion control. These fluctuations had not been observed during the sanitary survey inspections. The Dunstable DPW Director reported that the two (2) 5,000 gallon hydro-pneumatic storage tanks were failing to maintain pressure, which resulted in the well pump cycling on and off for short bursts. The operation of the well pump controls the operation of the potassium hydroxide chemical pump, which adjusts pH, which, in turn, also continuously

turned on and off the chemical feed system for short bursts resulting in fluctuation of pH.

- E. On November 16, 2017, MassDEP met with the Dunstable Town Administrator to discuss operational issues at the PWS noted during both the sanitary survey inspections and the October unannounced inspection.
- F. On November 22, 2017, Respondent submitted a Corrective Action Plan with timeline for removing and replacing the two hydropneumatic tanks with a 75,000 gallon atmospheric tank and replacing 1,800 feet of undersized water main for better hydraulics.
- G. On January 29, 2018, Respondent submitted a staffing plan contracting out the certified operator services.
- H. On or before February 1, 2018, Respondent hired Whitewater, Inc. as their Drinking Water Certified Operator ("Contract Operator") to operate the PWS. The Contract Operator conducts daily visits of the PWS and performs operation and maintenance on the wells, chemical feed system, hydropneumatic tanks and distribution system.
- I. Since February 9, 2018, as required in the July 27, 2017 Sanitary Survey Report, the Contract Operator has been submitting weekly chemical treatment reports showing pH readings from the inline pH analyzer ranging from 6.4 to 7.3 as opposed to 5.8 to 9.5 during the October complaint inspection. Even though the wide range in pH fluctuations has been reduced, the pH of the treated water entering the distribution system is not consistently 7.0 or greater. Therefore, Respondent has failed to properly operate and maintain its system in a manner that ensures the delivery of safe drinking water to consumers, in violation of 310 CMR 22.04(7).

### III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

6. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

7. MassDEP's authority to issue this Consent Order is conferred by the statutes and regulations cited in Part II of this Consent Order.

8. Respondent shall perform the following actions:

A. On or before June 29, 2018, Respondent shall submit:

1) Standard Operating Procedures (SOP) for review and approval outlining:

- a) Daily, weekly and monthly duties and tasks the operator performs to ensure that the hydropneumatic tanks are operating properly; and,
- b) Daily, weekly and monthly duties the operator performs to ensure the chemical feed system is optimized to maintain a pH of greater than or equal to 7.0 in the distribution system, including monitoring the distribution system for pH as required in the July 27, 2017 Sanitary Survey report.

2) Corrective Action Plan for review and approval that includes an evaluation of the existing chemical feed system, treatment objective(s), and identifies modifications needed to optimize corrosion control treatment performance, e.g., ensure that the pH is 7.0 or greater at the entry point.

3) The section of the Emergency Response Plan that outlines how the water system will be operated to ensure the delivery of a fit and pure supply of drinking water to all consumers if the hydropneumatic tanks were to become inoperable.

B. On or before September 30, 2018, Respondent shall submit an administratively and technically complete WS33 permit application and design for a 75,000 gallon elevated storage tank, and water main replacement along Pleasant Street for better hydraulic flow for the new tank. The permit application shall also include any modifications to the chemical feed system identified in the approved Corrective Action Plan, as specified in paragraph 8.A.2) above, to ensure a minimum pH of 7.0 at the entry point.

C. On or before December 31, 2019, Respondent shall complete the installation of the 75,000 gallon above ground storage tank, distribution piping modifications and the removal and demolition of the old hydropneumatic tanks.

9. Except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

Robert Bostwick, Drinking Water Section Chief  
MassDEP-CERO  
8 New Bond Street  
Worcester, MA 01606

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

10. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

11. Force Majeure - General

- A. MassDEP agrees to extend the time for performance of any requirement of this Consent Order if MassDEP determines that such failure to perform is caused by a Force Majeure event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2) such event is beyond the control and without the fault of Respondent and Respondent's employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondent or Respondent's employees, agents, consultants, and contractors.
- B. Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.
- C. If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondent shall immediately, but in no event later than 5 days after obtaining knowledge of such event, notify MassDEP in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay or potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. If Respondent intends to attribute such delay or potential delay to a Force Majeure event, such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondent's right to request an extension based on the event.

- D. If MassDEP determines that Respondent's failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondent otherwise complies with the notice provisions set forth in paragraph C above, MassDEP agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that Respondent's failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondent's failure to perform a requirement of this Consent Order during the extension of the time for performance resulting from a Force Majeure event.
- E. A delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.

12. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.

13. Respondent shall pay to the Commonwealth the sum of Four Thousand Six Hundred dollars (\$ 4,600.00) as a civil administrative penalty for the violations identified in Part II above. MassDEP hereby agrees to suspend payment of the entire penalty amount; provided, however, that if Respondent violates any provision of this Consent Order, or further violates any of the regulations cited in Part II above within two years of the effective date of this Consent Order, Respondent shall pay to the Commonwealth the full amount of Four Thousand Six Hundred dollars (\$ 4,600.00) within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. This paragraph shall not be construed or operate to bar, diminish, adjudicate, or in any way affect, any legal or equitable right of MassDEP to assess Respondent additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of this Consent Order or any law or regulation.

This Consent Order establishes the schedule of payments, and constitutes notice that the payments are due as described above. Except for the first payment, and solely for Respondent's convenience, billing notices may be sent to Respondent before each payment due date. All payments must be made according to the schedule and terms agreed upon in this Consent Order, regardless of whether Respondent receives billing notices. All payments made after the first payment must include the billing stub from the billing notice (if received by Respondent). Failure to make timely payments in accordance with the foregoing payment plan shall result in revocation of the payment plan. In such event, the entire remaining penalty amount, plus interest dating back to the default date, shall become immediately due to the Commonwealth.

Respondent shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts, or by electronic funds transfer. If payment is made by certified check, cashier's check, or money order, Respondent shall clearly print on the face of its payment Respondent's full name, the enforcement document number appearing on the first page of this Consent Order, and Respondent's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 3982  
Boston, Massachusetts 02241-3982

14. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

15. This Consent Order may be modified only by written agreement of the parties hereto.

16. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

17. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

18. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

19. This Consent Order shall be binding upon Respondent and upon Respondent's, successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy

of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

20. In addition to the penalty set forth in this Consent Order, if Respondent violates any provision of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$1,000.00 per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

21. Respondent shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts, or by electronic funds transfer. If payment is made by certified check, cashier's check, or money order, Respondent shall clearly print on the face of its payment Respondent's full name, the enforcement document number appearing on the first page of this Consent Order, and the Respondent's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 3982  
Boston, Massachusetts 02241-3982

In the event Respondent fails to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, Respondent shall be liable to the Commonwealth for up to three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, § 6C.

22. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

23. Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the Town of Dunstable Wells and Hydropneumatic tanks for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

24. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

25. This Consent Order shall become effective on the date that it is executed by MassDEP.

[No Further Text Appears on This Page.]

In the Matter of: Town of Dunstable  
ACOP-CE-18-5D00004407

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### IMPORTANT INSTRUCTIONS

For Payment to Lockbox and for Return to MassDEP of the signed ACOP (two (2) copies)

- 1) Send the two (2) signed copies of the ACOPs (NOT the Payment) to the address below  
MassDEP will return to you a signed duplicate original for your records.)

Robert Bostwick, Drinking Water Section Chief  
MassDEP-CERO  
8 New Bond Street  
Worcester, MA 01606

- 2) DO NOT INCLUDE ANY PAYMENT with the two (2) signed copies of this  
Administrative Consent Order with Penalties (ACOP).
- 3) DO NOT SEND THE SIGNED ACOP to the COMMONWEALTH LOCKBOX that is  
referenced in par. 13 of the ACOP.

The Commonwealth Lockbox is ONLY for payments, as referenced above.  
MassDEP cannot receive any documents sent to the Lockbox.

**Consented To:**  
**TOWN OF DUNSTABLE**

By: Leah D. Basbanes

Leah D. Basbanes, Acting Chair of Board of Selectmen  
511 Main Street  
Dunstable, MA 01827

Federal Employer Identification No.: 04-6001135

Date: 6/5/2018

**Issued By:**  
**MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By: Mary Jude Pigsley

Mary Jude Pigsley, Regional Director  
Central Regional Office  
8 New Bond Street  
Worcester, MA 01606

Date: 6/19/18